

Exhibit 11

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of Plaintiffs' Motion for Summary
Judgment as to Defendant Mylan

CAUSE NO. D-1-GV-07-001259

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THE STATE OF TEXAS)	IN THE DISTRICT COURT
)	OF
ex rel.)	
)	
VEN-A-CARE OF THE)	
FLORIDA KEYS, INC.)	
)	
Plaintiffs,)	
)	TRAVIS COUNTY, TEXAS
vs.)	
)	
SANDOZ, INC. f/k/a GENEVA)	
PHARMACEUTICALS, INC., EON)	
LABS,)	
)	
MYLAN PHARMACEUTICALS, INC.,)	
MYLAN LABORATORIES, INC.,)	
UDL LABORATORIES, INC.,)	
)	
TEVA PHARMACEUTICALS USA,)	
INC. f/k/a LEMMON)	
PHARMACEUTICALS, INC., COPLEY)	
PHARMACEUTICALS, INC. IVAX)	
PHARMACEUTICALS, INC., SICOR)	
PHARMACEUTICALS, INC., and)	
TEVA NOVOPHARM, INC.,)	
)	201st JUDICIAL
Defendants.)	DISTRICT

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VIDEOTAPE DEPOSITION OF: DAVID WORKMAN

- - - -

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY)MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION)Master File No.
_____)01-12257-PBS
_____)
_____)
THIS DOCUMENT RELATES TO:)Judge Patti B.
State of California, ex rel.)Saris
Ven-A-Care v. Abbott Laboratories,)
Inc., et al.)
Case No. 03-cv-11226-PBS)
_____)

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VIDEOTAPE DEPOSITION OF: DAVID WORKMAN
- - - -

DATE: November 20, 2008
Thursday, 9:00 a.m.

LOCATION: Lakeview Golf Resort & Spa
1 Lakeview Drive
Morgantown, WV 26508

TAKEN BY: State of Texas

REPORTED BY: JoAnn M. Brown, RMR, CRR
Notary Public
Reference No. JB09890

1 that are reported to Texas Medicaid?

2 A. Yes.

3 Q. What is reported to Medicaid?

4 A. There is a form with a category of prices or
5 category of customers in which we list either
6 a price or a range of prices for customers who
7 fit in that category.

8 Q. All right. Have you looked at those forms
9 yourself?

10 A. Yes.

11 Q. Okay. For the wholesale -- the cost to
12 wholesalers or distributors, do you know what
13 price -- how Mylan determines what price to
14 report in that category?

15 MR. ROBBEN: Objection. Form.

16 A. I believe there is a category for wholesalers,
17 and, in parentheses, it states WAC, and I
18 believe we put WAC in that box.

19 Q. Okay. And where do you get your WAC from?
20 Where do you store that information?

21 A. We store that in both our SAP system and our
22 CARS system.

23 Q. What is the -- is it a pricing file, or what
24 is it called? Do you know?

25 A. It is a price file.

1 Q. In this pricing information, do you maintain
2 historical price information?

3 A. Yes.

4 Q. How far back?

5 A. I don't know how far back our history of our
6 WACs we have. With SAP, it is date-driven,
7 and there are historical WACs in there from
8 the implementation of SAP. RenCS also is
9 date-driven and has historical prices. CARS
10 has date-driven prices, and that would contain
11 a history. IMPCON, I do not believe that was
12 date-driven, so the last price loaded would be
13 the last price loaded. That would be what
14 would appear.

15 Q. Do these pricing files also contain contract
16 pricing history?

17 A. Yes, for SAP, CARS, RenCS, CorVision, there
18 would be a price history maintained by date.
19 IMPCON, I believe it was the last price loaded
20 would override the previous price.

21 Q. How does Mylan go about calculating the AMP
22 that it reports to the Centers for Medicaid --
23 Medicare and Medicaid Services? Do you know?

24 A. I know some pieces of this, and what we do is,
25 it is handled in a different department than

1 and clean this up.

2 When you say there are some reports
3 run and they're known as price lists, can you
4 describe that price list?

5 A. Those are prices that are loaded in our
6 transactional database, either our direct
7 database or our indirect database, that are
8 either for invoicing purposes or for
9 chargeback processing purposes.

10 Q. Okay. And so these price lists are actual
11 prices charged by Mylan to customers, correct?

12 A. Yes.

13 Q. And why does Mylan create those price lists?

14 MR. ROBBEN: Objection. Form.

15 A. Why do they -- is your question why do we run
16 price lists?

17 Q. Yes, sir.

18 A. Either to provide to our customers or to
19 review at our discretion.

20 Q. I'm really more focused on the latter part for
21 the moment, and that is, when Mylan is
22 interested in reviewing the price list, is
23 there a general business reason why Mylan
24 wants to review those prices?

25 MR. ROBBEN: Objection. Form.

1 it's -- I didn't want to stop you, but I think
2 this is getting outside the scope of the
3 Notice.

4 MR. ANDERSON: Okay. If you want to
5 instruct him, I understand, and then I'll move
6 on.

7 MR. ROBBEN: Okay. Mr. Workman, I
8 instruct you not to answer the last question.
9 It's outside the scope of the Notice.

10 BY MR. ANDERSON:

11 Q. Okay. What's the frequency, Mr. Workman, of
12 the price list report publication within
13 Mylan?

14 A. What time period are we referring to?

15 Q. Well, let's start presently.

16 A. As requested, as needed, it could be on a
17 daily basis.

18 Q. What's your general experience over the years
19 that you've worked for Mylan -- and if it's
20 changed, you can indicate that, but what's
21 your general experience with the frequency
22 that Mylan creates price list reports and
23 circulates those?

24 A. Well, that's two different questions. Running
25 a price list and circulating them are two

1 different things.

2 I look at price lists or price
3 reports daily.

4 Q. How often are they circulated?

5 A. What do you mean by circulated?

6 Q. How often are price lists created and
7 circulated within Mylan's sales, marketing and
8 pricing departments?

9 A. I would not categorize them as being
10 circulated.

11 Q. Okay. Let me back up a step then, and you
12 just tell me what are the typical
13 circumstances in which the price lists are
14 disseminated, if at all?

15 A. If a customer requests a price list, if one of
16 our sales personnel requests a price list, if
17 we are doing a bid or a pricing review. Those
18 are some examples of why one would be created.

19 Q. Okay. And, now, getting back to the
20 extraction of the data and what have you, you
21 mentioned that there are reports that had been
22 created, correct?

23 I'll rephrase. You've mentioned
24 that there are reports that are run, and that
25 if something new and unusual has to be

1 financial reporting perspective, because a
2 financial reporting, from an AR perspective or
3 from a government price reporting, is based
4 upon transactions that have occurred and that
5 have been realized.

6 Q. Would you agree that as a general matter,
7 Mylan and UDL have the capability of
8 calculating net prices on their products from
9 the actual sales transaction records?

10 MR. ROBBEN: Objection. Form.

11 A. Again, that's a difficult question to answer.
12 There are some estimates, yes, but a lot of
13 those -- and you got to understand the timing
14 too. A sales transaction is one thing, but at
15 the end of the day, the net price may not be
16 realized for several transactions dates, days,
17 months, time that have past. So, yes, at the
18 time of sale we will know what we have
19 invoiced a customer at. If there are
20 discounts that are then applied at a future
21 date, we will not know that at that time, but
22 not until after the fact that we receive that
23 data.

24 Q. Okay.

25 A. And there may not be any discounts applied for

1 that particular sale.

2 Q. I'll break it down then on time frame. Do you
3 agree then on a bi-weekly basis, Mylan and UDL
4 have the exact of calculating net prices for
5 their products looking at their actual sales
6 records?

7 MR. ROBBEN: Objection. Form.

8 A. Again, I still think that's a difficult
9 question. Let me give you an example.

10 I can run a price list and apply all
11 of the discounts that may hit that product by
12 customer and say, if everything does happen,
13 if we price this customer at this price point,
14 this will happen; however, all of those
15 discounts may not be applied at that time of
16 sale. It may be something different in the
17 future, and that won't be realized until after
18 those transactions have been received or
19 realized. So, yes, we can do some estimates,
20 and for best price, for example, we do apply
21 all of the discounts available; however, that
22 still is an estimate.

23 Q. Do you find that your estimates are normally
24 accurate?

25 A. I believe our estimates are accurate. They do

1 change, and there are reconciliations, but I
2 would like to make the assumption that we do
3 make good estimates.

4 Q. Because Mylan ultimately tries its very best
5 to accurately estimate the prices its selling
6 its products for so it can best understand its
7 business?

8 MR. ROBBEN: Objection. Form.

9 Q. Correct?

10 A. Yes.

11 Q. As a general matter, at the time of sale, does
12 Mylan expect that all of the rebates will
13 be -- that are offered will be achieved?

14 A. Not all, no.

15 Q. Most?

16 A. It depends on the customer. It depends on the
17 product and the situation. There are
18 assumptions.

19 Q. What are the normal assumptions?

20 A. It just depends. It depends on a customer's
21 volume if there is an annual rebate or a
22 goal. It is assumed that all of our customers
23 will be paid -- will pay on time, and they
24 will earn their 2 percent prompt payment
25 discount. So, that is an assumption. There

1 MR. KIM: The one before that one?

2 MR. ANDERSON: Krinke 29.

3 MR. KIM: Was there an attachment to
4 that e-mail?

5 MR. ANDERSON: Yes, there was. The
6 entire exhibit -- well, my copy is screwed up
7 for some reason --

8 MR. KIM: Okay.

9 MR. ANDERSON: -- so I just used the
10 cover page.

11 BY MR. ANDERSON:

12 Q. Mr. Workman, does that appear to be a
13 PowerPoint presentation that was created
14 within Mylan?

15 A. Yes.

16 Q. And most likely created within your
17 department, correct?

18 A. Yes.

19 Q. Did you have a hand in the creation of that
20 document?

21 A. I may have.

22 Q. Looking at the second page particularly, sir,
23 of the exhibit, it's titled Who Does Mylan
24 Sell To? And one of the categories is Chains,
25 correct?

1 A. Yes.

2 Q. And that's consistent with your memory that
3 individuals within Mylan did refer to
4 customers such as Wal-Mart and Albertsons as
5 chain customers?

6 A. Yes.

7 MR. ANDERSON: I'll pass the witness
8 at this time.

9 - - - -

10 EXAMINATION

11 - - - -

12 BY MR. SISNEROS:

13 Q. Good afternoon, Mr. Workman.

14 I'm Eliseo Sisneros of the
15 California Attorney General's Office here on
16 behalf of the California case in the MDL.

17 Just some clarification on some --
18 on your testimony regarding your distinction
19 between a chargeback transaction and a
20 chargeback credit.

21 Do you recall that testimony?

22 A. Yes.

23 Q. And if I understood your testimony correctly,
24 the chargeback transaction is a process that
25 is handled through the CARS system; is that